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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,425	01/27/2004	Gerald Leslie Hart	102790-106/30038	4146

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EXAMINER	
SEMBER, THOMAS M	

ART UNIT	PAPER NUMBER
2875	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/766,425	HART ET AL.
	Examiner	Art Unit
	Thomas M. Sember	2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 August 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2 and 7-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Roumpos et al (US2003/0007887A1). Roumpos et al (US2003/0007887A1) discloses an imitation flame air freshener device that comprises: an imitation flame (see page 5, #70 and see page 6, #0078) , a fan (20), and a supply of volatile air treatment material (18 or 33).

Regarding claim 2, the device includes an electrical light source (32) within the proximity of the imitation flame.

Regarding claim 7, the volatile air treatment material is a fragrancing composition.

Regarding claim 8, the volatile air treatment material is an air freshening composition.

Regarding claim 10, A method for dispensing a volatile air treatment material to the ambient environment which contemplates the steps of: providing an imitation tlame air freshener device according to claim 1 and operating the said device in order to dispense the to the ambient environment.

Regarding claim 11, the ambient environment is the interior of a room.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3-5 rejected under 35 U.S.C. 102(b) as being anticipated by Shih. Shih discloses a chamber which includes a fine mesh or series of vent holes (see column 2, lines 5-10 and figure 4) adapted to permit the a flowing current of air into the chamber, as well as plurality of finely divided reflective particles 3.

Regarding claim 4, the finely divided particles are selected from comminuted foil, metallic glitter, are or other reflective particles.

Regarding claim 5, the device includes an electrical light source 21 within the proximity of the chamber.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roumpos et al in view of Horng. Roumpos et al discloses the claimed invention except for the teaching that a battery operates a fan. Roumpos et al does teach though that an AC or DC power source can be used with aroma emitting device. Horng teaches that a vapor generator and fan powered by a Dc batteryd. It would be obvious to one skilled in the art at the time the invention was made to use a DC battery for the aroma emitter device of Roumpos et al in order to provide a more portable air freshening device.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roumpos et al in view of Andeweg. Roumpos et al discloses the claimed invention except for the teaching that the aroma emitting device can also include a insecticide. Andeweg teaches that a vapor generator with air freshening material and/or Insecticide material. It would be obvious to one skilled in the art at the time the invention was made to substitute an insecticide material for the fragrance material of Roumpos et al in order to generate other vapors for different uses as taught by Andeweg.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roumpos et al in view of Horng. Roumpos et al discloses the claimed invention except for the teaching that the aroma emitting device can be used in a vehicle. Horng teaches a vapor generator with air freshening material which can be used in a room or a motor vehicle (see column 1, lines 10-15). It would be obvious to one skilled in the art at the time the invention was made to use the aroma emitting device of Roumpos et al in a vehicle as taught by Horng in order to generate a pleasant smell in the interior of the vehicle.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lin discloses a imitation candle similar to applicant's invention.

Other art of interest: Limburg et al (filed after applicant's invention teaches a flameless candle similar to applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Sember whose telephone number is 571-272-2381. The examiner can normally be reached on M-F 8 A.M- 5.30 p.m. first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378 The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas M Sember
Primary Examiner
Art Unit 2875

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